

STATE OF MICHIGAN
COURT OF APPEALS

In re R. D. JOHNSON, JR., Minor.

UNPUBLISHED
October 20, 2015

No. 325564
Oakland Circuit Court
Family Division
LC No. 11-791659-NA

In re R. D. JOHNSON, JR., Minor.

No. 325988
Oakland Circuit Court
Family Division
LC No. 11-791659-NA

Before: BORRELLO, P.J., and JANSEN and OWENS, JJ.

PER CURIAM.

In these consolidated appeals, in Docket No. 325564 respondent-mother appeals as of right a December 12, 2014 circuit court order terminating her parental rights to the minor child RD. In Docket No. 325988, respondent-father appeals as of right a January 26, 2015 circuit court order terminating his parental rights to the minor child. Termination of both respondents' parental rights was based on MCL 712A.19b(3)(g) (failure to provide proper care or custody) and (j) (child will be harmed if returned to parent). Respondent-mother's parental rights were also terminated under subsection (c)(i) (conditions of adjudication continue to exist). For the reasons set forth in this opinion, we affirm both orders.

I. BACKGROUND

In December 2011, the circuit court authorized the initial petition, which sought temporary custody of RD. According to the petition, respondent-mother, then age 16, had been arrested and charged with two counts of assault, was being held at Oakland County Children's Village for two felonious assault charges and was unable to care for the child. The petition identified respondent-father as a putative father, and he was not then named a respondent. Respondent-mother entered a no contest plea and the circuit court assumed jurisdiction over the minor child. The circuit court ordered respondent-mother to comply with a treatment plan and for both parents to have unsupervised visitation. Respondent-mother was released from

Children's Village and moved in with her grandmother, where the minor child had been placed. Shortly thereafter, respondent-father was incarcerated in the county jail.

In April 2012, respondent-mother left the home of her grandmother without disclosing her whereabouts or her plans. By October 2012, she had turned herself in to law enforcement for a parole violation and entered a year-long program at Children's Village, where she participated in therapy services and parenting classes. Respondent-father was released from jail in April 2013. Although he was not made a respondent at that time, he was offered services, which he refused.

In August 2013, a permanency planning hearing occurred. Respondent-mother had successfully completed her Children's Village program. The foster care worker felt that she needed additional therapy and parenting classes and made referrals for those services. The circuit court ordered that respondent-father participate in drug screens, parenting classes, and therapy, and to comply with a parent agency agreement. Respondent-father signed a parent/agency agreement, but the very next day, he was again incarcerated on a shoplifting charge.

Another permanency planning hearing took place in September 2013. At that time, the circuit court was advised that neither parent was progressing on their treatment plan. Respondent-mother had been arrested for retail fraud and then released on probation, and she was not participating in therapy or parenting classes. Respondent-father was incarcerated with an earliest release date of February 2014. The circuit court ordered the agency to initiate termination proceedings. A petition was filed in October 2013. The petition named respondent-father as the child's father and sought termination of both respondents' parental rights based on their lack of progress on their treatment plans.

Respondent-father entered a no contest plea to a subsequent petition and the court found termination warranted under MCL 712A.19b(3)(g) and (j). However, after the release of *In re Sanders*, 495 Mich 394; 852 NW2d 524 (2014) in June 2014, the circuit court decided that further proceedings were necessary. The circuit court directed that another petition be filed.

In July 2014, Department of Health and Human Services filed a petition naming respondent-father as a respondent with specific allegations against him. The petition requested jurisdiction over the child, as well as termination of both respondents' parental rights. Respondent-father pleaded no contest to this petition, and the circuit court entered an Order of Adjudication, and an order finding termination warranted under subsections (3)(g) and (j). Respondent-mother opted for a hearing, which occurred in February 2014, after which the circuit court found subsections (3)(c)(i), (g) ,and (j) established with regard to her by clear and convincing evidence.

The circuit court conducted separate best-interest hearings for each parent from October 2014 through January 2015. Respondent-father had been released from prison in February 2014. Respondent-mother had an active warrant out for her arrest due to failure to comply with the terms of her probation. The minor child, then almost three years old, had been continuously in the care of the minor child's great-grandmother since the minor child was two months old. The circuit court received testimony from the great-grandmother, the foster care worker, a

psychologist who administered evaluations of respondents, and both respondents. The circuit court also admitted both respondents' June 2014 psychological evaluations. Following the proofs, the circuit court found termination of respondents' parental rights in the minor child's best interests and entered orders terminating respondents' parental rights. This appeal ensued.

II. ANALYSIS

Respondents do not challenge the circuit court's finding of statutory grounds to terminate their parental rights but do contend that the circuit court erred in concluding that termination of their parental rights was in RD's best interests.

In the event that the circuit court finds a statutory ground for termination by clear and convincing evidence, the circuit court shall then order termination of parental rights if the circuit court also finds that termination is in the best interests of the child. MCL 712A.19b(5). Whether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). In deciding a child's best interests, a court may consider the child's bond to his parent; the parent's parenting ability; the child's need for permanency, stability, and finality; and the suitability of alternative homes. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014); *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). The trial court should weigh all the evidence available to determine the child's best interests. *White*, 303 Mich App at 713. A circuit court's determination regarding the child's best interests is reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

In this case, there was a preponderance of the evidence to support that termination of both respondents' parental rights was in RD's best interests, and therefore the circuit court did not clearly err in terminating their parental rights. Respondent-mother failed to engage in her treatment plan after she left Children's Village. Her treatment plan required individual therapy, random drug screens, parenting classes, attendance at RD's medical appointments to be aware of his allergies and how to keep him safe, housing and legal income, and visitation. While respondent-mother was in the Children's Village year-long program she participated in therapy and completed parenting classes. After her release, the foster care worker felt that additional therapy and parenting classes were needed and made referrals for these services, however, respondent-mother failed to follow through on the referrals. Respondent-mother had a history of substance abuse. It is unknown the extent and exact nature of her drug abuse because she failed to follow up with referrals for drug screens and thus not provide any drug screens. Respondent-mother did not have a legal source of income or an appropriate home for the minor child. She only sporadically visited the minor child during the pendency of the proceedings, which commenced in December 2011. According to the foster care worker, respondent-mother failed to complete any portion of the treatment plan.

Moreover, the evidence also showed that respondent-mother lacked a bond with the minor child. The minor child had serious special needs, but respondent-mother failed to attend any of the minor child's medical appointments and appeared unfamiliar with all of the minor child's allergies or use of an epipen, which the minor child needed in the event of a medical emergency. Respondent-mother's conduct showed a lack of concern for the minor child and the foster care worker opined there would be serious safety concerns if respondent-mother had

unsupervised contact with the minor child any time soon. In addition, testimony showed that respondent-mother displayed a lack of parenting skills during visitation.

Respondent-mother's latest psychological evaluation also revealed serious concerns. She minimized her previous aggressive behaviors and involvement in illegality, continued to be dependent on others for her physical and emotional care, and harbored anger and resentment that would potentially affect her ability to care for the minor child. Respondent-mother remained in need of services and was not able to provide the child with permanence and stability. Moreover, it did not appear she would be able to do so in the foreseeable future. At the time of respondent-mother's best-interest hearing in October 2014, there was an active warrant out for her arrest due to her failure to comply with the terms of her probation. The evidence also established that the minor child was thriving in his foster care placement where the minor child was provided stability and appropriate monitoring and treatment for the minor child's medical conditions.

On this record, the preponderance of evidence supported that termination of respondent-mother's parental rights was in the minor child's best interests and the trial court did not clearly err in terminating respondent-mother's parental rights. *In re Trejo*, 462 Mich at 356-357.

Similarly, the preponderance of the evidence supported that termination of respondent-father's parental rights was in the minor child's best interests. Respondent-father had serious issues with criminality and was frequently incarcerated during these proceedings. Respondent-father was jailed for a year shortly after the case started, was released in April 2013, but then was incarcerated again a few months later. Respondent-father was 23 years old and had six adult felony convictions, four misdemeanor offenses, and a juvenile record including an assault charge. Respondent-father's inability to conform his life to the law evinced a complete disregard for his responsibilities as a father.

Respondent-father completed some parenting classes while incarcerated and was in parenting classes at the time of termination, but he still displayed many deficits in his parenting skills. Record testimony revealed that respondent-father placed the minor child at risk on occasion during visitations and displayed inappropriate discipline techniques. Although respondent-father testified that he had a bond with the minor child, he acknowledged the lack of a close bond. Testimony showed that the minor child did not show any affection toward respondent-father and did not ask about him. Respondent-father inconsistently visited the minor child during the proceedings and during recent visits he failed to engage with the minor child.

The foster care worker testified that she did not observe any evidence that respondent-father was seriously committed to working toward reunification, and she felt that it was in the minor child's best interests to terminate respondent-father's parental rights. Respondent-father had not complied with essential elements of his treatment plan. Also, respondent-father's recent psychological evaluation revealed concerns. Respondent-father minimized his criminal behavior and other difficulties, lacked financial stability, and failed to contemplate the consequences of his actions. The clinician felt that respondent-father remained in need of services. He was not able to provide the minor child with permanence and stability, and it did not appear he would be able to do so in the foreseeable future. Any bond between respondent-father and the minor child was minimal, in the clinician's view, because of respondent's inconsistent visitation.

Respondent-father contends that termination was premature because he had insufficient opportunity to work on his treatment plan. He points out that he was not even a respondent until 2013 and he was incarcerated shortly after receiving his treatment plan.

We initially note that, “the focus at the best-interest stage has always been on the child, not the parent.” *In re Moss*, 301 Mich App at 87. Furthermore, the record establishes that respondent-father was offered a treatment plan and services months before the termination petition was filed, but he refused services. Upon his release from jail in April 2013, respondent-father failed to attend an appointment to meet with the foster care worker for case planning and missed visits with the minor child. Respondent-father also had an opportunity to start complying with his treatment plan after he was released from prison in February 2014, but failed to do so. Upon his release, respondent-father informed the worker that he was not interested in services. Referrals were made anyway for counseling and drug screens, but respondent did not participate in those services. Given these circumstances, with respondent-father failing to take advantage of opportunities he was given to work on a treatment plan, termination of his parental rights was not premature and the circuit court did not clearly err in finding that termination was in the minor child’s best interests. *In re Trejo*, 462 Mich at 356-357.

Affirmed.

/s/ Stephen L. Borrello

/s/ Kathleen Jansen

/s/ Donald S. Owens